1924

G. S. 72

Department of Revenue

OFFICE Board of Revenue (A&R)

STATION Madras

File No. 975	3.30 Vol. II
Dated 11 4 24	1901 onwards

To whom sent	Date	Initls
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(SUBJECT.)

Lands (Kanara) – Mangalore

Dm OS no 29/24 – Permude village – S no 68/2

Private rights – Claim

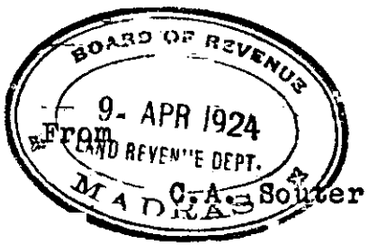
Defence sanctioned

* Not to be filled in the case of permanent records.

A1904

Ref. on A.3-1120-24.

South Kanara Collector's Office,
Mangalore, 4th April 1924.



From C.A. Souter, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

Suit - Mangalore - District Munsif's Court - O.S.1924-29.

*****

The above suit has been filed by one Luca Nazareth against Government and 2 others for a declaration that S.No.68/D of Permude village, Mangalore Taluk, belongs to him on mulgeni right and for other consequential reliefs.

2. The plaint plot is an assessed dry waste measuring ---- 0.33 cents and bearing an assessment of 0-5-0. In January 1923 one Venkatramana Upadhya, the owner of S.Nos. 66/1.2.6 complained to the Divisional Officer, Mangalore that owing to the encroachment of this plot by the Plaintiff the customary dam which was being - put up across the thodu S.No.66/5 could not be put up and in ---- consequence the 2nd and 3rd rice crops of himself and other ----- adjoining wargdars could not be raised for want of wate.. This petition was enquired into by the Revenue Inspector. During this enquiry the adjoining pattadars of 66/4, 67/7 & 65/2 & 4 strongly ------ objected to the encroachment as it interfered with the putting up of another dam besides that mentioned by Venkatramana Upadhya. Even Albert Nazareth, the brother of the Plaintiff and the ------ encroacher of 68/D4 admitted that the dam referred to by -------- Venkatramana Upadhya was being put up until 3 years ago and he als admitted that the levelling of 68/D2 was begun only in August --- 1922. The Revenue Inspector reported on 11th March 1922 that the western portion of the plaint plot subdivided as 68/D1 was ------ encroached upon 2 years previously by planting 2 cocoanut plants,

a few plantain plants and betel vines, that the eastern ——— portion denoted as 68/D2 was levelled and rendered fit for — paddy cultivation in the rainy season of 1922 and that owing to these objectionable encroachments no dams could be put up. Thereupon the Tahsildar issued notices under section 7 of the Land Encroachment Act. In pursuance of this notice the —— Plaintiff submitted a petition alleging possession of the —— plaint plot by himself and his predecessors-in-interest on — mulgeni for over 100 years and in proof of his warg claim he produced a receipt dated 10.11.1899 and a sale deed of ——— 12.7.1904. These documents were reported by the Revenue —— Inspector to take in the plaint plot, but they are not binding on Government who were not a party to them. The Tahsildar also inspected the plot on 29th May 1923 and found the ——— encroachments to be highly objectionable, there being no other land in the vicinity from which to bring earth for putting up the dam. He further remarked that since the predecessor-in-interest of the petitioner himself was a party to the darkhast proceedings in which this plot was reserved for the use of the dam, she had acquiesced in such reservation as she did not — appeal against the order. The Tahsildar accordingly levied a penalty of Rs.7 which was collected on 13th and 16th July — 1923. The encroachments not having been removed, notices — under section 6 of the Land Encroachment Act were issued on — 10th June 1923. Against these notices appeals were filed — before my predecessor Mr. Wells who declined to interfere in his order D.Dis.No.4408-22, dated 21th September 1923. A — notice of suit was then sent, but it was recorded - vide D.Dis. No.6519, dated 16th November 1923. Hence the suit.

3. The encroachments were removed and the improvements auctioned by the Revenue Inspector for Rs.5-4-3 on 11th ——— October 1923.

4. The Government Pleader, Mangalore, who was consulted by me is of opinion that the suit is barred by Limitation. On the merits, however, he thinks that the documents produced by

the Plaintiff, though not binding on Government, may yet be of evidentiary value in proving the long possession set up by the Plaintiff. But the improvements with the exception of ------ 2 arecanut trees aged about 10 years adjoining the thodu were estimated by the Revenue Inspector to be not more than 2 years old. Further, the adjoining pattadars Venkatramana Upadhya, Laxminaraina Upadhya, Kaveramma and Puttu alias Venkamma have stated that there was a mamool custom of taking mud from the plaint plot for the use of the dam. In view of these facts, I think that the plaintiff is not likely to succeed even on the facts. I request, therefore, that the Board may be pleased to sanction the defence of the suit.

5. I propose to file as evidence on behalf of Government (i) the darkhast order dated 15th February 1913 in D.R.842/1321 to prove that the Plaintiff's predecessor-in-interest claimed the plot only as kumaki and that she acquiesced in the ----- Government's right in that she failed to appeal against the order of reservation, (ii) petition presented to the Settlement Officer by the Plaintiff's mulgar Srinivasa Shastry to prove that no -- objection was taken to the classification of the plaint plot as Government land. I also propose to cite as witnesses for ----- Government the persons named in paragraph 4 to disprove the long possession alleged by the Plaintiff and also the Revenue ------ Inspector who inspected it in March 1923 to prove that the ----- improvements were made recently.

6. I request that the enclosed draft written statement -- prepared by the Government Pleader, Mangalore, may be approved.

7. The records noted in the margin are enclosed.

(1) Copy of plaint.
(2) Copy of written statement.
(3) Copy of Mangalore Government Pleader's letter dated 31.3.1924.
(4) This office dis. file 6519-23 D, dated 16.11.1923.
(5) Do. 1408-23 D, dated 21. 9.1923.
(6) Records of D.R.842/21 of the Mangalore Taluk office.
(7) Records of E.C.No.95/32 of the ------- Mangalore Taluk office.
(8) Objection petition filed by Srinivasa Shastry before the Special Settlement Officer at the introduction of ------ Settlement.

8. The --- plaint dated 19th January 1924 was received by me -- from the Government Pleader, Mangalore on 30th January -- 1924. The suit -

stands posted to 24th April 1924 for hearing.

Your obedient servant,

For Collector. 7.4

Plaint.

In the Court of the District Munsif of Mangalore.

Original Suit No.29 of 1924.

Between:-

Luca Nazareth — Plaintiff.

and

1. The Secretary of State for India in Council.
2. Padmanabha Shastry.
3. Srinivasa Shastry. — Defendants.

Plaint under Schedule 1 Order VII Rule 1 of the Code of Civil Procedure:-

Plaintiff abovenamed begs to state as follows:-

I. Plaintiff is son of J.M. Nazareth, residing at ——— Guruvayanakere pete of Kuvettu village, Yerdur magane, ——— Uppinangady Taluk.

His address for the service of all notices and process is his Vakil's address in Mangalore.

II. All processes on the 1st Defendant may be served on the Collector of South Kanara, 2nd Defendant is son of Dasu Shastry and 3rd Defendant is son of the said Dasa Shastry, Defendants 2 and 3 residing at Permude village, Mangalore Taluk.

III.(a) Plaintiff holds, interalia, the lands fully described in the Schedule A below, under mulgeni under 2nd Defendant, —— under an ancient mulgeni more than 180 years old granted by the predecessor-in-title of 2nd Defendant to the predecessor-in-title of Plaintiff. Thoughthe original mulgenichit has been - lost, the boundaries have been set out in a registered mulgeni receipt granted by the mulgar on 10th November 1899.

(b) At the recent settlement however, as has come to the knowledge of Plaintiff since the encroachment proceedings referred to below, the plaint plot seems to have been entered as poramboke, in spite of the old and valuable improvements effected thereon by Plaintiff and his predecessor-in-title.

(c) Taking advantage of this settlement mistake, encroachment proceedings were instituted against Plaintiff in respect of his enjoyment of the aforesaid plaint plot, and though the Plaintiff set out the warg right aforestated, the Revenue authorities have decided against plaintiff, and have taken possession of the plaint plot on or about 11th October 1923, destroying the valuable improvements effected thereon, of the value of over 250-0-0, as fully detailed in Schedule B below.

(d) Plaintiff by a registered notice dated 12th October 1923 called upon 1st Defendant to redeliver the plaint plot to him, and to pay him the value of the destroyed improvements referred to, but though the said notice has been served on the Collector of South Kanara more than 2 months prior to date of suit, nothing has been done to meet Plaintiff's lawful demands in this behalf. Inthe said notice Plaintiff has also claimed mesne profits at Rs.8-0-0 per year, which Plaintiff submits is a moderate rate.

(e) Plaintiff claims the plaint plot both by virtue of the aforesaid mulgeni carved out of the warg appertaining to Muli No.38 of Permude village belonging to the predecessors-in-title of Defendants 2 and 3, and on the strength of prescription. Plaintiff submits that even if the mulgeni should not be deemed to have run for the prescriptive period, he is entitled to take advantage of the period of possession by the mulgars prior to the aforesaid mulgeni.

(f) The 3rd Defendant has been made a party, as he is pattadar of the plaint plot according to revenue records to prevent all technical objections of non-joinder.

(g) The cause of action for this suit arose on or about 11th October 1923 at permude village, within the jurisdiction of this Court.

IV. Plaintiff values the reliefs claimed at Rs.352-2-6 for the purposes of jurisdiction and of court fees.

V. Plaintiff therefore prays for a judgment and decree for the following reliefs:-

(a) Declaring the plaint plot fully described in the Scehdule A below belongs to the Plaintiff on mulgeni right, and --- directing 1st Defendant to deliver plaint plot to Plaintiff, free of all objections from Defendants 2 and 3. This relief is valued at Rs.100-0-0, the market value of the said plot.	Rs.100- 0- 0
b) Directing 1st Defendant to pay Plaintiff Rs.250-0-0, the value of ------- improvements on the plaint property ------ destroyed by the officials of 1st Defendant.	Rs.250- 0- 0
(c) Directing the 1st Defendant to pay mesne profits at Rs.8-0-0 per year --- from 11-10-1923 till date of plaint.	Rs. 2- 2- 6
(d) Interest on (b) and (c) from -- this date till realization.	
(e) Further mesne profits at ------ Rs.8-0-0 per year from this date till ---- delivery with interest at 6% and for such other and further relief as the Court may deem fit to grant under the circumstances of the case.	

Schedule A.

Description of plaint property.

Plot marked in the annexed plaint plan as 68/D which is a portion of S.No.68/B, a dry plot measuring Acres 1.01 and -- assessed at Re.1-0-0 in Permuda village, No.55 of Mangalore -- Taluk in the registration Sub District of Mangalore, South -- Kanara Registration District.

Schedule B.

Particulars of damage caused to the plaint property by the servants of the 1st Defendant:-

1) Value of 3 cocoanut trees cut.	Rs.	21- 0- 0
2) Value of about 20 bearing plantain trees cut and destroyed.	"	8- 0- 0
3) Value of 2 betel leaf vines destroyed.	"	50- 0- 0
4) Value of yams and other vegetables destroyed.	"	5- 0- 0
5) Value of paddy fields made in the plaint plot by the Plaintiff and his predecessors-in-title interest dug and destroyed.	"	150- 0- 0
6) Value of yenel crop existing in the paddy field aforesaid at the time when the servants of the 1st Defendant took possession of the plaint land.	"	16- 0- 0
	Rs.	250- 0- 0

Mangalore,
18th January 1924.

(Sd) M. Madhava Rau,
Vakil for Plaintiff.

(True Copy)

For Collector.

M.S.R./7.4.24.

7.4.24

9

In the Court of the District Munsif of Mangalore.

Original Suit No.29 of 1924.

Between: -

Luca Nazareth — Plaintiff.

The Secretary of State for India in Council represented by the Collector of South Kanara and 2 others. — Defendants.

Written statement of 1st Defendant under Order VIII and Rule 1 of C.P.C.

The Defendant abovenamed states as follows: -

1. Plaintiff's suit is unjust and unsustainable at law

2. This Defendant denies that Plaintiff and his ------ predecessors-in-title have been holding the plaint plot on -- mulgeni for over 180 years. The averments made in that ---- connection in para III (a) are altogether denied and -------- Defendant puts Plaintiff to strict proof of the same.

p.4 above.

3. The suit plot is Government land which was rightly demarcated and classified as such at the Settlement.

4. The said plot 68/D having been excluded from ------ Plaintiff's patta at the time of the Settlement, and -------- Plaintiff not having objected at any time to the said ------- exclusion, his alleged claim ~~if any~~ thereto, is now clearly time-barred and he is estopped from seeking any remedy at --- this distance of time.

5. Even if it be true that the land in dispute is ---- included in Plaintiff's sale-deed or in the mulgeni receipt - of 1889 or in any of his other documents, that cannot affect the rights of Government, as the Government was not a party to the same nor have they acquiesced in their validity.

6. This Defendant does not admit that Plaintiff has -- acquired any title to the suit plot by prescription or by --- long and adverse possession.

7. Plaintiff's mother having distinctly agreed in ---- D.R.842/1321 to the reservation of the plot for the use of -- the dam, he is precluded from going against the admissions -- made by his mother in the said Darkhast case.

8. The value of the improvements standing on the land as given in the plaint is not true and is grossly --- exaggerated.

9. Plaintiff having encroached upon Government land, proceedings were rightly taken against him under the Land Encroachment Act and Plaintiff cannot question the propriety or the legality of the said proceedings.

10. Plaintiff is not entitled to any mesne profits nor to any of the reliefs claimed in the suit.

It is prayed that Plaintiff's suit may be dismissed with costs.

~~True Copy~~

P Mcmenamy
7 4

For Collector.

WSPB
7.11.24
7.11.24

M.D'S.4/4.

11

Letter from A. J. Lobo, Esquire, B.A., B.L., ------
Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 31st March 1924.
No.-G.P.65/1924.

****

Reference: Suit - Mangalore District Munsif's Court O.S.29 of 1924.

****

I have sent the draft of the written statement to be filed in the above suit. On the merits the two strong --- points on the side of Government appear to me to be -------- (1) that Plaintiff not having objected to the classification of the plaint plot as poramboke at the time of the --- settlement, his claims if any to the same are now time ----- barred, (2) the Plaintiff's mother Rakel Bai having agreed to the reservation of the plaint plot for the use of the -- dam in D.R.842/1321, Plaintiff is bound by the said ------- reservation and is now estopped from claiming the plot or going behind the admissions made by his mother then. On the other hand, there is the specific contention put ------ forward by Plaintiff that he and his predecessors in title have been holding the plaint plot for over 180 years and -- that the same are included within the boundaries of his --- documents. The report of the Revenue Inspector shows --- that the suit plot is actually included in the mulgeni ---- receipt of 1899 A.D. and in Plaintiff's mother's sale deed of -- 1904. Though these statements are not binding on -------- Government, still they are of much evidentiary value in law, in proving the long possession set up by Plaintiff and if it is true as alleged by Plaintiff in his petition to the Tahsildar dated 8th ~~November~~ April 1923 that there are old ------ standing improvements such as Bettu fields, Jack, Areca and Cocoanut trees in 68/D?, it would go a great way to establish his contention that the plaint plot belongs to him in mulgeni right. It may be said however that the Revenue -- inquiry do not go to prove that there are any such old ---- improvements. A further report may be called for regard-

ing these alleged improvements in 68/D2 and their age and also as to the important fact whether at the time of the settlement rough patta relating to the plaint plot had --- been actually issued and served on Plaintiff's predecessor -in-title or on his mulgar and whether no objections were preferred thereto by any of them.

/True Copy/

For Collector. 7.4.24

M.D'S.4/4.

7.4.24

7.4.24

Hearing 24-4-24.

DRAFT FOR APPROVAL.

C.P. 30—1,201,431—17-12-21.

Enclosures.

Despatch No.

When given to fair-copying

Fair-copied by

Fair copy compared by

When despatched

Office.

Register No. A 1901, dated L Q

From

Subject.

Suits (S Kanara) Mangal
Dm O.S. no 29/24.
Permde vill.: S no 68
To - Private rights clai
THE reference sanctioned

M-1
S.S
A.S

Mr. I.
11.4.24

Res (mis) 875
11.4.24

The Board sanctions
the defence of the suit
and approves the draft
written statement subj
to the following modificat

(i) For the words
" and plaintiff questions the
propriety etc " substitute
" and in para 9 of the
draft, substitute " and
the plaintiff cannot questi
the propriety etc "

(ii) Add the following a

pp 9+10 of
the mode

i) In para
" any "
ii) In para 5 for "Govt" read "the
no party Substitute " the
Govt were not a party "
p 10 ct

paragraph 11

"11. This respondent does not admit the truth of such of the allegations in the plaint as are not expressly admitted herein and puts the plaintiff to strict proof of the same"

2. The records said to have ~~been submitted~~ have not been received

since received

10.4.24

C 11/4/24

To the Collector of Kannur with a sketch ~~submitted~~ and records sent